

Federal Register

Thursday
August 8, 1996

Part IV

Department of Defense General Services Administration National Aeronautics and Space Administration

48 CFR Ch. 1, et al.
Federal Acquisition Regulations;
Introduction of Miscellaneous
Amendments; Final and Interim Rules

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Chapter 1**

[Federal Acquisition Circular 90-41]

**Federal Acquisition Regulation;
Introduction of Miscellaneous
Amendments****AGENCIES:** Department of Defense (DOD),
General Services Administration (GSA),and National Aeronautics and Space
Administration (NASA).**ACTION:** Summary presentation of final
and interim rules.**SUMMARY:** This document serves to
introduce and relate together the interim
and final rule documents which follow
and which comprise Federal
Acquisition Circular (FAC) 90-41. The
Civilian Agency Acquisition Council
and the Defense Acquisition Regulations
Council have agreed to issue FAC 90-
41 to amend the Federal Acquisition
Regulation (FAR) to implement changes
in the following subject areas. A
companion document, the SmallEntities Compliance Guide, follows this
FAC and may be located on the Internet
at <http://www.gsa.gov/far/compliance>.

Item	Subject	FAR case	Analyst
I	Information Technology Management Reform Act of 1996	96-319	O'Neill.
II	Compliance with Immigration and Nationality Act Provisions	96-320	DeStefano.
III	Federal Acquisition and Community Right-to-Know	95-305	DeStefano.
IV	Restrictions on Certain Foreign Purchases	95-303	O'Such.
V	Legal Proceedings Costs	93-010	Olson.

DATES: For effective dates and comment
dates, see individual documents which
appear elsewhere in this separate part.**FOR FURTHER INFORMATION CONTACT:** The
analyst whose name appears in relation
to each FAR case or subject area. For
general information, contact the FAR
Secretariat, Room 4037, GS Building,
Washington, DC, 20405 (202) 501-4755.
Please cite FAC 90-41 and FAR case
number(s).**SUPPLEMENTARY INFORMATION:** Federal
Acquisition Circular 90-41 amends the
FAR as specified below:**CASE SUMMARIES**For the actual revisions and/or
amendments to these FAR cases, refer to
the specific item number and subject set
forth in the documents following these
item summaries.Item I—Information Technology
Management Reform Act of 1996 (FAR
Case 96-319)This interim rule implements the
Information Technology Management
Reform Act (ITMRA) of 1996 (Division
E of Public Law 104-106). ITMRA seeks
to improve Federal information
management and to facilitate acquisition
of state-of-the-art information
technology that is critical for improving
the efficiency and effectiveness of
Government operations. Under ITMRA,
each executive agency is authorized to
acquire information technology,
including entering into contracts that
provide for multi-agency acquisitions of
information technology in accordance
with guidance issued by the Office ofManagement and Budget. This interim
rule also contains certain policies and
procedures from the Federal
Information Resources Management
Regulation (FIRMR). The changes to the
FAR include (1) addition of a definition of
“information technology” at 2.101;
(2) relocation of the definition of “major
system” from 34.001 to 2.101; (3)
addition of a new Subpart 8.9, Financial
Management Systems Software (FMSS)
Mandatory Multiple Award Schedule
(MAS) Contracts Program; (4) revision of
Part 39, Acquisition of Information
Technology; (5) addition of a new clause
at 52.239-1, Privacy or Security
Safeguards; and (6) various conforming
amendments in other parts of the FAR.Item II—Compliance with Immigration
and Nationality Act Provisions (FAR
Case 96-320)This interim rule amends FAR 9.406
to implement Executive Order 12989 of
February 13, 1996, Economy and
Efficiency in Government Procurement
Through Compliance with Certain
Immigration and Nationality Act
Provisions. The Executive Order
provides that a contractor may be
debarred upon a determination by the
Attorney General that the contractor is
not in compliance with the employment
provisions of the Immigration and
Nationality Act.Item III—Federal Acquisition and
Community Right-to-Know (FAR Case
95-305)The interim rule published in FAC
90-34 is revised and finalized. The ruleimplements Executive Order 12969,
Federal Acquisition and Community
Right-to-Know, which requires that
Government contractors report in a
public manner on toxic chemicals
released into the environment. The final
rule differs from the interim rule in that
it amends FAR Subpart 23.9, the
provision at 52.223-13, and the clause
at 52.223-14 to clarify that (1) an offeror
must submit a Certification of Toxic
Chemical Release Reporting regarding
only those facilities that it owns or
operates, and (2) a contractor must file
a Toxic Chemical Release Inventory
Form with the Environmental Protection
Agency only for its facilities that are
subject to the reporting requirements of
the Emergency Planning and
Community Right-to-Know Act of 1986.Item IV—Restrictions on Certain
Foreign Purchases (FAR Case 95-303)This final rule amends FAR Subpart
25.7 and the clause at 52.225-11 to (1)
implement Executive Order 12959,
Prohibiting Certain Transactions with
Respect to Iran, and (2) reflect the
regulations of the Department of the
Treasury, Office of Foreign Assets
Control (31 CFR Chapter V). Iran and
Libya are added to the list of sources
from which procurement is restricted;
Vietnam, Cambodia, and South Africa
are removed from the list.Item V—Legal Proceedings Costs (FAR
Case 93-010)This final rule amends FAR 31.205-
47 to make the costs of pre- or post-
award protests unallowable. An

exception to this requirement is made for costs incurred to defend against a protest, if the costs are incurred pursuant to a written request from the contracting officer.

Dated: August 2, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

August 8, 1996; Number 90-41

Federal Acquisition Circular (FAC) 90-41 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

FAR case 96-320 is effective August 8, 1996. FAR cases 93-010, 95-303, and 95-305 are effective October 7, 1996. Far Case 96-319 is effective August 8, 1996, and applies to all information technology solicitations issued on or after August 8, 1996.

Dated: July 29, 1996.

Eleanor R. Spector,

Director, Defense Procurement.

Dated: July 23, 1996.

Edward C. Loeb,

Acting Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Tom Luedtke,

Deputy Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 96-20186 Filed 8-7-96; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 5, 7, 8, 9, 12, 15, 16, 17, 19, 22, 32, 33, 34, 37, 38, 39, 45, 46, 51, 52, and 53

[FAC 90-41, FAR Case 96-319, Item I]

RIN 9000-AHXX

Federal Acquisition Regulation; Information Technology Management Reform Act of 1996 (ITMRA)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense

Acquisition Regulations Council have agreed to an interim rule amending the Federal Acquisition Regulation (FAR) to provide for a simplified, clear, and understandable process for acquiring information technology (IT) that addresses the management of risk. This interim rule implements the Information Technology Management Reform Act (ITMRA), Division E of Public Law 104-106, dated February 10, 1996. The interim rule also incorporates the recommendations of the Federal Information Resources Management Regulation (FIRMR) Transition Committee, relocating those provisions of the FIRMR, which were recommended for retention, in the FAR. This regulatory action was not subject to Office of Management and Budget (OMB) review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: Effective Date: August 8, 1996.

Applicability: This regulation applies to all IT solicitations issued on or after August 8, 1996. The General Services Board of Contract Appeals (GSBCA) will not accept any protest received on or after August 8, 1996.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before October 7, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRs), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAC 90-41, FAR case 96-319 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501-3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-41, FAR case 96-319.

SUPPLEMENTARY INFORMATION:

A. Background

Federal information systems are critical to every American. The efficiency and effectiveness of the Federal Government is dependent upon the effective use of information. The Information Technology Management Reform Act (ITMRA) of 1996 seeks to improve Federal information management and to facilitate Federal Government acquisition of state-of-the-art IT that is critical for improving the efficiency and effectiveness of Federal Government operations.

Under ITMRA, each executive agency is authorized to acquire IT, including entering into contracts that provide for multi-agency acquisitions of IT in accordance with guidance issued by OMB. The Chief Information Officer (CIO) of each agency is responsible for the IT programs of the agency. The Director of OMB is responsible for improving the acquisition, use, and disposal of IT by the Federal Government. The development and use of best practices in the acquisition of IT will be encouraged. Additionally, the Director will monitor the effectiveness of, and compliance with, directives issued under ITMRA. The Director will also coordinate the development and review of policy by the Administrator, Office of Information and Regulatory Affairs, with the Office of Federal Procurement Policy.

In light of the passage of ITMRA, and the recognition by the CIO Council that a new regulatory framework is necessary to effect the tenor and tenets of the ITMRA, the FIRMR Transition Committee reviewed the FIRMR (41 CFR Chapter 201) and made recommendations as to provisions of the FIRMR that should be included in the FAR. The language resulting from those recommendations is included in this interim rule.

This interim rule implements ITMRA, the recommendations of the FIRMR Transition Committee, and the goals of transforming acquisition of IT into a results-oriented procurement system which ensures responsibility and accountability of Federal agencies in the use of IT in support of agency missions.

Section 5202 of ITMRA encourages agency heads to use modular contracting or incremental acquisition when acquiring a major information technology system. A proposed rule giving guidance to contracting officers on use of this technique will be developed after publication of this interim rule. Regulation drafters will work closely with industry and contracting agencies to ensure that the proposed rule provides guidance to agencies using this technique.

B. Regulatory Flexibility Act

This rule is expected to have a significant beneficial impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., because the rule simplifies and streamlines procedures for the acquisition of information technology. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business

Service of Protest (Aug. 1996)

(a) Protests, as defined in section 33.101 of the Federal Acquisition Regulation, that are filed directly with an agency, and copies of any protests that are filed with the General Accounting Office (GAO), shall be served on the Contracting Officer (addressed as follows) by obtaining written and dated acknowledgment of receipt from _____. [Contracting Officer designate the official or location where a protest may be served on the Contracting Officer.]

(b) The copy of any protest shall be received in the office designated above within one day of filing a protest with the GAO.

(End of provision)

34. Section 52.233-3 is amended by revising the clause date and the first sentence of paragraph (f) to read as follows:

52.233-3 Protest after Award.

* * * * *

Protest After Award (Aug. 1996)

* * * * *

(f) If, as the result of the Contractor's intentional or negligent misstatement, misrepresentation, or miscertification, a protest related to this contract is sustained, and the Government pays costs, as provided in FAR 33.102(b)(2) or 33.104(h)(1), the Government may require the Contractor to reimburse the Government the amount of such costs. * * *

(End of clause)

* * * * *

35. Section 52.239-1 is added to read as follows:

52.239-1 Privacy or Security Safeguards.

As prescribed in 39.106, insert a clause substantially the same as the following:

Privacy or Security Safeguards (Aug. 1996)

(a) The Contractor shall not publish or disclose in any manner, without the Contracting Officer's written consent, the details of any safeguards either designed or developed by the Contractor under this contract or otherwise provided by the Government.

(b) To the extent required to carry out a program of inspection to safeguard against threats and hazards to the security, integrity, and confidentiality of Government data, the Contractor shall afford the Government access to the Contractor's facilities, installations, technical capabilities, operations, documentation, records, and databases.

(c) If new or unanticipated threats or hazards are discovered by either the Government or the Contractor, or if existing safeguards have ceased to function, the discoverer shall immediately bring the situation to the attention of the other party. (End of clause)

PART 53—FORMS

36. Section 53.245(a) is amended by revising the last sentence to read as follows:

53.245 Government property.

* * * * *

(a) * * * (See 45.608-2(b)(2) and 45.608-8.)

* * * * *

[FR Doc. 96-20187 Filed 8-7-96; 8:45 am]

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Part 9**

[FAC 90-41, FAR Case 96-320, Item II]

RIN 9000-AHXX

Federal Acquisition Regulation; Compliance With Immigration and Nationality Act Provisions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule amending the Federal Acquisition Regulation (FAR) Part 9 to implement Executive Order 12989 of February 13, 1996, Economy and Efficiency in Government Procurement Through Compliance With Certain Immigration and Nationality Act Provisions. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

DATES: Effective Date: August 8, 1996.

Comment Date: Comments should be submitted to the FAR Secretariat at the address shown below on or before October 7, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRs), 18th & F Streets, NW, Room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAC 90-41, FAR case 96-320, in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501-1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-41, FAR case 96-320.

SUPPLEMENTARY INFORMATION:**A. Background**

Executive Order 12989, Economy and Efficiency in Government Procurement Through Compliance With Certain Immigration and Nationality Act Provisions, was signed on February 13, 1996. The Executive Order provides that a contractor may be debarred upon a determination by the Attorney General that the contractor is not in compliance with the employment provisions of the Immigration and Nationality Act (INA). This interim rule revises FAR 9.406-2, to specify that such a determination by the Attorney General is a basis for debarment, and 9.406-4, to stipulate the duration of the debarment mandated by the Executive order.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Only a small number of Federal contractors are likely to be the subject of a determination, by the Attorney General, that they are not in compliance with the employment provisions of the Immigration and Nationality Act. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR Case 96-320), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling

reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement Executive Order 12989, Economy and Efficiency in Government Procurement Through Compliance With Certain Immigration and Nationality Act Provisions, which was effective upon its execution (February 13, 1996). However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 9

Government procurement.

Dated: August 2, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 9 is amended as set forth below:

1. The authority citation for 48 CFR Part 9 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATIONS

2. Section 9.406-2 is amended in paragraph (a)(4) in the second parenthetical by removing "section" and inserting "Section" in its place, and by revising (b) to read as follows:

9.406-2 Causes for debarment.

* * * * *

(b)(1) The debarring official may debar a contractor, based upon a preponderance of the evidence, for—

(i) Violation of the terms of a Government contract or subcontract so serious as to justify debarment, such as—

(A) Willful failure to perform in accordance with the terms of one or more contracts; or

(B) A history of failure to perform, or of unsatisfactory performance of, one or more contracts.

(ii) Violations of the Drug-Free Workplace Act of 1988 (Public Law 100-690), as indicated by—

(A) The offeror's submission of a false certification;

(B) The contractor's failure to comply with its certification; or

(C) Such a number of contractor employees having been convicted of violations of criminal drug statutes occurring in the workplace, as to indicate that the contractor has failed to make a good faith effort to provide a drug-free workplace (see 23.504).

(iii) Intentionally affixing a label bearing a "Made in America" inscription (or any inscription having the same meaning) to a product sold in

or shipped to the United States, when the product was not made in the United States (see Section 202 of the Defense Production Act (Public Law 102-558)).

(iv) Commission of an unfair trade practice as defined in 9.403 (see Section 201 of the Defense Production Act (Public Law 102-558)).

(2) The debarring official may debar a contractor, based on a determination by the Attorney General of the United States, or designee, that the contractor is not in compliance with Immigration and Nationality Act employment provisions (see Executive Order 12989). The Attorney General's determination is not reviewable in the debarment proceedings.

* * * * *

3. Section 9.406-4 is amended by revising paragraphs (a) and (b) to read as follows:

9.406-4 Period of debarment.

(a)(1) Debarment shall be for a period commensurate with the seriousness of the cause(s). Generally, debarment should not exceed 3 years, except that—

(i) Debarment for violation of the provisions of the Drug-Free Workplace Act of 1988 (see 23.506) may be for a period not to exceed 5 years; and

(ii) Debarments under 9.406-2(b)(2) shall be for one year unless extended pursuant to paragraph (b) of this subsection.

(2) If suspension precedes a debarment, the suspension period shall be considered in determining the debarment period.

(b) The debarring official may extend the debarment for an additional period, if that official determines that an extension is necessary to protect the Government's interest. However, a debarment may not be extended solely on the basis of the facts and circumstances upon which the initial debarment action was based. Debarments under 9.406-2(b)(2) may be extended for additional periods of one year if the Attorney General or designee determines that the contractor continues to be in violation of the employment provisions of the Immigration and Nationality Act. If debarment for an additional period is determined to be necessary, the procedures of 9.406-3 shall be followed to extend the debarment.

* * * * *

[FR Doc. 96-20190 Filed 8-7-96; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 23 and 52

[FAC 90-41; FAR Case 95-305; Item III]

RIN 9000-AG68

Federal Acquisition Regulation; Federal Acquisition and Community Right-to-Know

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) Parts 23 and 52 to implement Executive Order 12969. The Executive order requires that Federal agency contractors report in a public manner on toxic chemicals released to the environment. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: October 7, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501-1758 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-41, FAR case 95-305.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule with request for public comment was published on October 30, 1995 (60 FR 55306). Thirty-four comments were received from eight respondents. As a result of analyzing the public comments, the rule was revised to clarify that the owner or operator of a facility that is subject to the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) and the Pollution Prevention Act (PPA) reporting requirements is required to file Toxic Chemical Release Inventory Forms with the Environmental Protection Agency, and that offerors will submit certifications regarding only those facilities that the offeror owns or operates that will be used in performing the contract. This final rule also

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Section 52.223-13 is revised to read as follows:

52.223-13 Certification of Toxic Chemical Release Reporting.

As prescribed in 23.907(a), insert the following provision:

CERTIFICATION OF TOXIC CHEMICAL RELEASE REPORTING

October 7, 1996

(a) Submission of this certification is a prerequisite for making or entering into this contract imposed by Executive Order 12969, August 8, 1995.

(b) By signing this offer, the offeror certifies that—

(1) As the owner or operator of facilities that will be used in the performance of this contract that are subject to the filing and reporting requirements described in section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023) and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106), the offeror will file and continue to file for such facilities for the life of the contract the Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of EPCRA and section 6607 of PPA; or

(2) None of its owned or operated facilities to be used in the performance of this contract is subject to the Form R filing and reporting requirements because each such facility is exempt for at least one of the following reasons: (*Check each block that is applicable.*)

☐ (i) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

☐ (ii) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

☐ (iii) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

☐ (iv) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in Section 19.102 of the Federal Acquisition Regulation; or

☐ (v) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

(End of provision)

8. Section 52.223-14 is revised to read as follows:

52.223-14 Toxic Chemical Release Reporting.

As prescribed in 23.907(b), insert the following clause:

TOXIC CHEMICAL RELEASE REPORTING
October 7, 1996

(a) Unless otherwise exempt, the Contractor, as owner or operator of a facility used in the performance of this contract, shall file by July 1 for the prior calendar year an annual Toxic Chemical Release Inventory Form (Form R) as described in sections 313(a) and (g) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (42 U.S.C. 11023(a) and (g)), and section 6607 of the Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13106). The Contractor shall file, for each facility subject to the Form R filing and reporting requirements, the annual Form R throughout the life of the contract.

(b) A Contractor owned or operated facility used in the performance of this contract is exempt from the requirement to file an annual Form R if—

(1) The facility does not manufacture, process, or otherwise use any toxic chemicals listed under section 313(c) of EPCRA, 42 U.S.C. 11023(c);

(2) The facility does not have 10 or more full-time employees as specified in section 313(b)(1)(A) of EPCRA, 42 U.S.C. 11023(b)(1)(A);

(3) The facility does not meet the reporting thresholds of toxic chemicals established under section 313(f) of EPCRA, 42 U.S.C. 11023(f) (including the alternate thresholds at 40 CFR 372.27, provided an appropriate certification form has been filed with EPA);

(4) The facility does not fall within Standard Industrial Classification Code (SIC) designations 20 through 39 as set forth in Section 19.102 of the Federal Acquisition Regulation (FAR); or

(5) The facility is not located within any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Northern Mariana Islands, or any other territory or possession over which the United States has jurisdiction.

(c) If the Contractor has certified to an exemption in accordance with one or more of the criteria in paragraph (b) of this clause, and after award of the contract circumstances change so that any of its owned or operated facilities used in the performance of this contract is no longer exempt—

(1) The Contractor shall notify the Contracting Officer; and

(2) The Contractor, as owner or operator of a facility used in the performance of this contract that is no longer exempt, shall (i) submit a Toxic Chemical Release Inventory Form (Form R) on or before July 1 for the prior calendar year during which the facility becomes eligible; and (ii) continue to file the annual Form R for the life of the contract for such facility.

(d) The Contracting Officer may terminate this contract or take other action as appropriate, if the Contractor fails to comply accurately and fully with the EPCRA and PPA toxic chemical release filing and reporting requirements.

(e) Except for acquisitions of commercial items as defined in FAR Part 2, the Contractor shall—

(1) For competitive subcontracts expected to exceed \$100,000 (including all options), include a solicitation provision substantially the same as the provision at FAR 52.223-13, Certification of Toxic Chemical Release Reporting; and

(2) Include in any resultant subcontract exceeding \$100,000 (including all options), the substance of this clause, except this paragraph (e).

(End of clause)

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DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Parts 25 and 52**

[FAC 90-41; FAR Case 95-303; Item IV]

RIN 9000-AG82

Federal Acquisition Regulation; Restrictions on Certain Foreign Purchases

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) Parts 25 and 52 to implement Executive Order 12959, Prohibiting Certain Transactions with Respect to Iran, and to conform the FAR to other current restrictions of the Department of the Treasury. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: October 7, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such, at (202) 501-1759 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-41, FAR case 95-303.

SUPPLEMENTARY INFORMATION:**A. Background**

This final rule amends FAR Parts 25 and 52 to implement Executive Order

12959, Prohibiting Certain Transactions with Respect to Iran, which became effective May 6, 1995, and to conform the FAR to current restrictions in 31 CFR Chapter V (Office of Foreign Assets Control, Department of the Treasury). Subpart 25.7 and the clause at 52.225-11 are revised to add Iran and Libya to the list of prohibited sources, and to delete restrictions on procurement from Vietnam, Cambodia, and South Africa. A proposed rule was published in the Federal Register on February 22, 1996, at 61 FR 6910. No public comments were received. No changes were made to the proposed rule.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration certify that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any new requirements on contractors, large or small. The rule merely notifies contractors of changes in the existing prohibitions against transactions with certain countries. This change should have minimal impact on U.S. firms. There were no public comments in response to the Regulatory Flexibility Act Statement published with the proposed rule.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: August 2, 1996.

Edward C. Loeb,
Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 25 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

2. Subpart 25.7 is revised to read as follows:

Subpart 25.7—Restrictions on Certain Foreign Purchases

Sec.

25.701 Restrictions.

25.702 Contract clause.

25.701 Restrictions.

(a) The Government does not acquire supplies or services from foreign governments or their organizations when these supplies or services cannot be imported lawfully into the United States. Therefore, agencies and their contractors and subcontractors shall not acquire any supplies or services originating from sources within, or that were located in or transported from or through—

- (1) Cuba (31 CFR part 515);
- (2) Iran (31 CFR part 560);
- (3) Iraq (31 CFR part 575);
- (4) Libya (31 CFR part 550); or
- (5) North Korea (31 CFR part 500).

(b) Agencies and their contractors and subcontractors shall not acquire any supplies or services from entities controlled by the Government of Iraq (Executive Orders 12722 and 12724).

(c) Questions concerning these restrictions should be referred to the Department of the Treasury, Office of Foreign Assets Control, Washington, DC 20220, (202) 622-2520.

25.702 Contract clause.

The contracting officer shall insert the clause at 52.225-11, Restrictions on Certain Foreign Purchases, in solicitations and contracts over \$2,500.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.225-11 is revised to read as follows:

52.225-11 Restrictions on Certain Foreign Purchases.

As prescribed in 25.702, insert the following clause:

Restrictions on Certain Foreign Purchases
October 7, 1996

(a) Unless advance written approval of the Contracting Officer is obtained, the Contractor shall not acquire, for use in the performance of this contract, any supplies or services originating from sources within, or that were located in or transported from or through, countries whose products are banned from importation into the United States under regulations of the Office of Foreign Assets Control, Department of the Treasury. Those countries include Cuba, Iran, Iraq, Libya, and North Korea.

(b) The Contractor shall not acquire for use in the performance of this contract any supplies or services from entities controlled by the Government of Iraq.

(c) The Contractor agrees to insert the provisions of this clause, including this paragraph (c), in all subcontracts hereunder.

(End of clause)

[FR Doc. 96-20188 Filed 8-7-96; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 90-41; FAR Case 93-010; Item V]

RIN 9000-AG65

Federal Acquisition Regulation; Legal Proceedings Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to make the costs of pre- or post-award protests unallowable. An exception to this requirement is made for costs incurred to defend against a protest, if the costs are incurred pursuant to a written request from the contracting officer. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

EFFECTIVE DATE: October 7, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-41, FAR case 93-010.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule adds another category of unallowable costs to the list at 31.205-47(f). The rule disallows costs in connection with protests or the defense against protests of solicitations or contract awards, unless the costs of defending against a protest are incurred pursuant to a written request from the contracting officer. A proposed rule was published in the Federal Register on October 26, 1995, at 60 FR 54918. Twelve sources submitted public comments. All comments were considered in developing the final rule.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, applies to this final rule and a Final Regulatory Flexibility Analysis (FRFA) has been performed. Although a number of respondents took exception to the statement in the Federal Register that the proposed rule "is not expected to have a significant economic impact on a substantial number of small entities * * * because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply", they added that (1) many contracts awarded to small entities are cost-reimbursable and cost principles apply; (2) cost principles apply when small entities negotiate annual overhead rates; and (3) cost principles apply whenever a cost analysis is performed. We agree that cost principles apply in these cases, but the analysis concluded that a substantial number of small businesses are not involved. In addition, this rule only applies to those small entities (1) whose contracts are governed by cost principles; and (2) who file a protest, or are defending against a protest. Based on the data available, the analysis concludes that the percentage of small entities who meet this second criterion is well below 5 percent. A copy of the FRFA may be obtained from the FAR Secretariat.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: August 2, 1996.

Edward C. Loeb,
Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Part 31 is amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205-47 is amended by adding paragraph (f)(8) to read as follows:

31.205-47 Costs related to legal and other proceedings.

* * * * *

(f) * * *
(8) Protests of Federal Government solicitations or contract awards, or the defense against protests of such solicitations or contract awards, unless the costs of defending against a protest are incurred pursuant to a written request from the cognizant contracting officer.

* * * * *

[FR Doc. 96-20192 Filed 8-7-96; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE**GENERAL SERVICES ADMINISTRATION****NATIONAL AERONAUTICS AND SPACE ADMINISTRATION****48 CFR Chapter 1****Federal Acquisition Regulation; Small Entity Compliance Guide**

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration as the Federal Acquisition Regulation (FAR) Council. This Small Entity Compliance Guide has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 90-41 which amend the FAR. Further information regarding these rules may be obtained by referring to FAC 90-41 which precedes this notice. This document may be obtained from the Internet at <http://www.gsa.gov/far/compliance>.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, FAR Secretariat, (202) 501-4755.

SUPPLEMENTARY INFORMATION:

LIST OF RULES IN FAC 90-41

Item	Subject	FAR case
I	Information Technology Management Reform Act of 1996.	96-319

LIST OF RULES IN FAC 90-41—Continued

Item	Subject	FAR case
II	Compliance with Immigration and Nationality Act Provisions.	96-320
III	Federal Acquisition and Community Right-to-Know.	95-305
IV	Restrictions on Certain Foreign Purchases.	95-303
V	Legal Proceedings Costs.	93-010

Item I—Information Technology Management Reform Act of 1996 (FAR Case 96-319)

This interim rule implements the Information Technology Management Reform Act (ITMRA) of 1996 (Division E of Public Law 104-106). ITMRA seeks to improve Federal information management and to facilitate acquisition of state-of-the-art information technology that is critical for improving the efficiency and effectiveness of Government operations. Under ITMRA, each executive agency is authorized to acquire information technology, including entering into contracts that provide for multi-agency acquisitions of information technology in accordance with guidance issued by the Office of Management and Budget. This interim rule also contains certain policies and procedures from the Federal Information Resources Management Regulation (FIRMR). The changes to the FAR include (1) addition of a definition of "information technology" at 2.101; (2) relocation of the definition of "major system" from 34.001 to 2.101; (3) addition of a new Subpart 8.9, Financial Management Systems Software (FMSS) Mandatory Multiple Award Schedule (MAS) Contracts Program; (4) revision of Part 39, Acquisition of Information Technology; (5) addition of a new clause at 52.239-1, Privacy or Security Safeguards; and (6) various conforming amendments in other parts of the FAR.

Item II—Compliance With Immigration and Nationality Act Provisions (FAR Case 96-320)

This interim rule amends FAR 9.406 to implement Executive Order 12989 of February 13, 1996, Economy and Efficiency in Government Procurement Through Compliance with Certain Immigration and Nationality Act Provisions. The Executive Order provides that a contractor may be debarred upon a determination by the Attorney General that the contractor is not in compliance with the employment

provisions of the Immigration and Nationality Act.

Item III—Federal Acquisition and Community Right-to-Know (FAR Case 95–305)

The interim rule published in FAC 90–34 is revised and finalized. The rule implements Executive Order 12969, Federal Acquisition and Community Right-to-Know, which requires that Government contractors report in a public manner on toxic chemicals released into the environment. The final rule differs from the interim rule in that it amends FAR Subpart 23.9, the provision at 52.223–13, and the clause at 52.223–14 to clarify that (1) an offeror must submit a Certification of Toxic Chemical Release Reporting regarding

only those facilities that it owns or operates, and (2) a contractor must file a Toxic Chemical Release Inventory Form with the Environmental Protection Agency only for its facilities that are subject to the reporting requirements of the Emergency Planning and Community Right-to-Know Act of 1986.

Item IV—Restrictions on Certain Foreign Purchases (FAR Case 95–303)

This final rule amends FAR Subpart 25.7 and the clause at 52.225–11 to (1) implement Executive Order 12959, Prohibiting Certain Transactions with Respect to Iran, and (2) reflect the regulations of the Department of the Treasury, Office of Foreign Assets Control (31 CFR Chapter V). Iran and Libya are added to the list of sources

from which procurement is restricted; Vietnam, Cambodia, and South Africa are removed from the list.

Item V—Legal Proceedings Costs (FAR Case 93–010)

This final rule amends FAR 31.205–47 to make the costs of pre- or post-award protests unallowable. An exception to this requirement is made for costs incurred to defend against a protest, if the costs are incurred pursuant to a written request from the contracting officer.

Dated: August 2, 1996.

Edward C. Loeb,
Director, Federal Acquisition Policy Division.
[FR Doc. 96–20189 Filed 8–7–96; 8:45 am]

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